

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

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) OFFICE OF WEST VIRGINIA  
) SECRETARY OF STATE

Form #4

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Banking TITLE NUMBER: 106

CITE AUTHORITY W. Va. Code § 31A-2-4(c)(12)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Regulations Pertaining to the West  
Virginia Consumer Credit and Protection Act and the Money and Interest  
Article of Chapter Forty Seven

IF NO, SERIES OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING  
REVIEW BY THE LEGISLATIVE RULE MAKING COMMITTEE IS  
HEREBY MODIFIED AS A RESULT OR REVIEW AND COMENT BY  
THE LEGISLATIVE RULE MAKING COMMITTEE. THE ATTACHED  
MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Sharon G Bias *sd*

Authorized Signature



**DIVISION OF BANKING**

Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • FAX: (304) 558-0442

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**CONSENT TO FILE RULE**

December 20, 1996

TO WHOM IT MAY CONCERN:

Title of Rule: Regulations Pertaining to the WV Consumer Credit and Protection Act  
and the Money and Interest Article of Chapter Forty Seven

Title Number: 106

Series Number: 1

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Pursuant to West Virginia Code §§ 5F-2-2(a) and 64-7-4(c), the undersigned hereby consents to the filing of the foregoing rule as modified.

Signed this 20th day of Dec, 1996.

A handwritten signature in cursive script that reads "James H. Paige III".

James H. Paige III  
Secretary of Tax & Revenue

TITLE 106  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF BANKING

SERIES 1  
REGULATIONS RULE PERTAINING TO THE WEST VIRGINIA  
CONSUMER CREDIT AND PROTECTION ACT  
AND THE MONEY AND INTEREST ARTICLE  
OF CHAPTER FORTY SEVEN

§106-1-1. General.

1.1. Scope. -- ~~These regulations~~ This rule establishes general ~~rules provisions~~ implementing and supplementing the West Virginia Consumer Credit and Protection Act and the Money and Interest Article, ~~chapter forty seven of the West Virginia Code W. Va. Code §§ 46A-1-101 et seq. and 47-6-1 et seq.~~

1.2. Authority. -- W. Va. Code §31A-2-4(c) ~~(11)~~ (12)

1.3. Filing Date. -- ~~April 22, 1992~~

1.4. Effective Date. -- ~~April 24, 1992~~

§106-1-2. ~~Regulations~~ Rules of General Application.

2.1. Actuarial method.

"Actuarial method: means the ~~method, defined by rules adopted by the commissioner,~~ of allocating payments made on a debt between principal or amount financed and loan finance charge or sales finance charge pursuant to which a payment is applied first to the accumulated loan finance charge or sales finance charge and the balance is applied to the unpaid principal or unpaid amount financed.

The actuarial method under West Virginia law is a basic computation of principal multiplied by rate, multiplied by time (principal X rate X time). Because West Virginia law prohibits the capitalization of accrued and unpaid finance charges, the United States Rule method ~~is~~ is incorporated in this rule regulation. The United States Rule method means that at the end of each payment period the unpaid balance of the amount financed ~~in~~ is increased by the finance charge earned during the payment period and is decreased by the payment made at the end of the payment period. If the payment is less than the finance charge earned, the adjustment of the unpaid balance of the amount financed is postponed until the end of the next payment period. Then if the sum of the two (2) payments is still less than the total earned finance charge for the two (2) payment periods, the

adjustment of the unpaid balance of the amount financed is postponed still another payment period, and so forth.

2.2. Computation of time.

2.2.a.(a) Actuarial method computation-

2.2.a.1(1) Three hundred sixty five (365) day year, actual day basis; or

2.2.a.2(2) Three hundred sixty (360) day year, thirty (30) day month, so long as interest computations by this method do not result in the interest charge exceeding three hundred sixty five (365) days of interest in one (1) year. (A month is considered to be one twelfth (1/12) of a year and a day to be one three hundred and sixty fifth (1/365) of a year.

2.2.a.2.A.(A) Prorate actual over thirty (30) day base

2.2.a.2.B.(B) Payoffs on last day of month, whether the twenty eighth, twenty-ninth, or thirty-first are same as the thirtieth, if the installment due date is the last day of the month.

2.2.b.(b) Rule of 78 computation.

Any generally accepted method for the allocation of charges consistent with the sum of the digits method.

2.3. Rebating in event of prepayment.

2.3.a.(a) Rebating under Rule of 78-

2.3.a.1(1) Prepayments in full on or before the fifteen (15) days following an installment due date are considered to have been made as of such the installment due date.

Prepayments in full on or after the sixteenth day following an installment due date are considered to have been made on the next succeeding installment due date.

2.3.a.2(2) The creditor is not required does not need to make a rebate of less than one dollar (\$1.00).

2.3.b.(b) Rebating under actuarial method:

2.3.b.1.(1) Daily "Payoff" which is determined by calculating the interest on a daily basis, or

2.3.b.2.(2) The "Fifteen Day Rule" method as described in Section paragraph 2.3.a.1(a)(1) of these regulations this rule, applies to precomputed credit transactions.

2.3.b.3.(3) A creditor may compute a rebate on the assumption that all payments were made as scheduled, or as deferred, if deferred.

2.3.b.4.(4) A creditor is not required to make a rebate of less than one dollar (\$1.00) in a precomputed credit transaction.

2.3.c.(c) Rebating on precomputed loans, credit sales, or credit transactions with an original term of thirty-six (36) months or less:

2.3.c.1.(1) A creditor may use any generally accepted method for the allocation of charges and the calculation of rebates consistent with the sum of the digits method where the precomputed loan, credit sale or credit transaction is payable in equal, unequal or irregular payments and the original term of the transaction is thirty-six (36) months or less or

2.3.c.2.(2) A creditor may use the An alternate method of allocation of charges and the calculation of rebates may be that described in subdivision 2.3.d(d) of this regulation rule.

2.3.d.(d) Rebating on precomputed loans, credit sales or credit transactions with an original term, greater than thirty-six (36) months.

2.3.d.1. A creditor shall use the actuarial procedure or method for the allocation of charges and other calculation of rebates consistent with the actuarial method as defined in Sections subsection 2.1 and subdivision 2.2.a(a) of these regulations this rule where the precomputed loan, credit sale or credit transaction is payable in equal, unequal or irregular payments and the original term of the transaction is greater than thirty-six (36) months.

2.3.e.(e) The terms "Finance Charge" as used in W. Va. Code §47-6-5d(a) and "finance charge which was required by applicable law to be disclosed" as used in W. Va. Code §47-6-5d(b) both mean "Loan Finance Charge" as defined in W. Va. Code §46A-1-102(26)(a) or "Sales Finance Charge" as defined in W. Va. Code §46A-1-102(42)(44), whichever is applicable.

2.4. Balloon payments.

2.4.a. A creditor shall rebate any precomputed agreement, entered into in a consumer credit sale or consumer loan transaction, in which any scheduled payment is at least twice as large as the smallest of all earlier scheduled payments other than any down payment, if paid in full, according to W. Va. Code §47-6-5d(b) if the credit sale or loan by application of the smallest scheduled payment will not payout within thirty-six (36) months or less.

2.5. Calculation of deferral charges on precomputed transactions.

The creditor shall use the method of calculation of deferral charges shall be consistent with the method of rebate which would be required or selected has been specified on that specific contract.

2.5.a.(a) Calculation of deferral charges under the Rule of 78.

2.5.a.1.(1) The word "Attributable" in the first sentence of W. Va. Code §46A-3-114(1) refers to charges earned on any installment on the basis of the Rule of 78, as provided in W. Va. Code §46A-3-111(1). For example, the deferral charge for deferring the fourth installment of a twelve (12) month contract and all remaining installments one (1) month would be nine seventy-eighths ( $9/78$ ) of the original finance charge. If the same balances are deferred an additional two (2) months, the same nine seventy-eighths ( $9/78$ ) charge may be made for each month. If the fourth through the seventh installments are subsequently paid and the eighth installment is deferred, the deferral charge would be the portion of the finance charge originally attributable to the eighth installment, i.e.  $5/78$ .

2.5.a.2.(2) Following a deferral, a creditor shall compute rebates for prepayment in full by multiplying the original finance charge by a fraction, having as a numerator the sum of all scheduled balances remaining unpaid to the deferred maturity date and as a denominator the sum of the originally scheduled balances, and the The creditor is not required to make a separate rebate of deferral charges: **Provided, however,** That if prepayment in full occurs during a deferral period (the period in which no payment is required or made by reason of a deferral), the creditor shall rebate the deferral charges for the unexpired full months in the deferral period and the deferrals will be considered not to have been made.

2.5.b.(b) A deferral charge under the actuarial method is the finance charge due for that payment period to be deferred.

2.5.c.(e) The creditor shall post deferral charges to the customer's account at the time such the deferrals are made and in any event, not later than the next normal updating of the customer's account record. The creditor shall clearly identify such the charges and indicate the installment upon which the charge is based. The customer's account record shall show the new final installment due date after each deferral.

2.5.d.(d) If a deferral charge is made and the customer's account record does not indicate to the contrary, it shall be reason to assume will be assumed that the written authorization for such charge is a part of the contract evidencing the obligation. If a separate written agreement is used, the creditor shall provide a copy to the customer and the lender or seller shall retain the original for a period of at least two (2) years following final entry on the customer's account record.

## 2.6. Deficiency judgments.

The phrase "Balance Owed" in W. Va. code §46A-2-119(2), (3) and (4), with respect to restrictions on a deficiency judgment, means the gross unpaid balance of the account, excluding any unearned charges.

## 2.7. Delinquency charges on precomputed contracts.

2.7.a.(a) A creditor may contract for and receive delinquency charges for consumer loans or consumer credit sales not exceeding the lesser of ten dollars (\$10.00) or five percent (5%) of the amount of any installment unpaid, following the tenth day after the originally scheduled or deferred due date, but no less than one dollar (\$1.00). Delinquency charges accrue on the eleventh day after the scheduled installment due date.

Example: If the installment due date is January 1, a delinquency charge accrues on January 12 if that installment is not previously paid in full. A creditor should post delinquency charges to the customer's account as they accrue and, in any event, no later than the next normal updating of the customer's account record. A creditor may collect delinquency charges at the time they accrue or any time thereafter.

2.7.b.(b) Delinquency charges, except where otherwise provided by law, are earned as they accrue and do not become a part of the total finance charge for purposes of rebating unearned charges.

2.7.c.(c) If the alternative method of computing delinquency charges (as set forth in W. Va. Code §46A-3-

112(1)(b)† is used, the delinquency charge shall in no instance exceed the amount of a deferral charge for the same installment.

2.7.d.(a) A creditor shall clearly identify delinquency charges upon the customer's account records. The installment upon which the charge is based shall also be indicated.

#### 2.8. Electronic data processing.

A creditor may use electronic data processing methods to maintain records and accounting systems, in whole or in part, ~~if the Commissioner finds they which~~ provide information equivalent to that required by these regulations this rule. If requested by the Commissioner, a creditor shall provide a written description of the system utilized, including all features that do not meet the regulatory requirements of this rule and a full explanation of how the equivalent information may be obtained, ~~if requested by the Commissioner.~~

#### 2.9. Minimum charge - revolving loan account.

2.9.a.(a) With respect to a consumer credit sale made pursuant to a revolving charge account, other than sales of real estate pursuant to W. Va. Code §46A-3-102, sellers are authorized to contract for and receive, as a minimum charge, the charge provided for in W. Va. Code §46A-3-103(4).

2.9.b.(b) With respect to a consumer loan made pursuant to a revolving loan account, lenders, other than supervised regulated consumer lenders, are authorized to contract for and receive, as a minimum charge, the charge provided for in W. Va. code §46A-3-106(4).

#### 2.10. Limitation on garnishment.

##### 2.10.a.(a) W. Va. Code §46A-2-130 provides in part:

"The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce payment of a judgment arising from a consumer credit sale or consumer loan may not exceed the lesser of:

—(1) Twenty percent (20%) of his disposable earnings for that week, or

(2) The amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor

Standards Act of 1938, U.S.C. Title 19, §206(a)(1), in effect at the time the earnings are payable."

2.10.b.(b) In the case of earnings for a pay period other than a week, the multiple of the federal minimum hourly wage shall be computed as follows:

2.10.b.1.(1) ~~Multiply the~~ The number of weeks (including fractions thereof) in the pay period are multiplied by thirty (30).

2.10.b.2.(2) In determining the number of weeks in a pay period:

A year shall equal fifty-two (52) weeks,

A month shall equal four and one third (4 1/3) weeks, and

A half-month shall equal two and one sixth (2 1/6) weeks.

Examples:

$4 \frac{1}{3} \times 30 = 130$ , is the multiple for a monthly pay period.

$2 \frac{1}{6} \times 30 = 65$ , is the multiple for a semi-monthly pay period.

$2 \times 30 = 60$ , is the multiple for a biweekly pay period.

2.10.b.3.(3) The multiple times the federal minimum hourly wage establishes the amount provided for in ~~subsection paragraph 2.10.a.2(a)(2)~~ of these regulations this rule.

**§106-1-3. Loan investigation fee, loan origination fee, loan assumption fee.**

3.1. The terms "Loan Finance Charge," as defined in W. Va. Code § 46A-1-102(26), and "Sales Finance Charge", as defined in W. Va. Code § 46A-1-102(39), shall include a loan investigation fee, a loan origination fee, a loan assumption fee or any other similar fee for purposes of determining the allowable usury limits on all consumer loans as that term is defined in W. Va. Code § 46A-1-102(15) and all consumer credit sales as that term is defined in W. Va. Code § 46A-1-102(13), regardless of the rate alternative utilized in W. Va. Code § 46A-3-104.

## ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** Division of Banking

**Subject:** West Virginia Consumer Credit and Protection Act and the Money and Interest Article of Chapter 47, 106CSR1

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### PERTINENT DATES

Filed for public comment: July 19, 1996  
Public comment period ended: August 19, 1996  
Filed following public comment period: August 28, 1996  
Filed LRMRC: August 28, 1996  
Filed as emergency:

Fiscal Impact: None

### ABSTRACT

The proposed rule amends a current legislative rule. It has been amended to include the provisions of the current rule relating to the West Virginia Consumer Credit and Protection Act so that all of the provisions relating to finance charges are in one rule. That rule would be repealed.

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### AUTHORITY

Statutory authority: W.Va. Code, §31A-2-4, which provides, in part, as follows:

(c) In addition to all other authority and powers vested in the commissioner by provisions of this chapter and other applicable laws, the commissioner is authorized and empowered:

...(12) To implement the provisions of chapter forty-six-a of this code applicable to consumer loans and consumer credit sales by the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code so long as said rules and regulations do not conflict with any rules and regulations promulgated by the state's attorney

general;...

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ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes. The proposed rule is somewhat confusing and needs some work to make it more understandable.

**VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?**

Yes.

**VIII. OTHER.**

Counsel has technical modifications to suggest.



FILED

DEC 20 3 41 PM '96

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**West Virginia Legislature**  
**Legislative Rule-Making Review Committee**

Room MB47-State Capitol  
Charleston, West Virginia 25305  
(304) 347-4840

Senator Mike Ross, Co-Chair  
Delegate Vicki Douglas, Co-Chair

Debra A. Graham, Counsel  
Joe Altizer, Associate Counsel  
Marie Nickerson, Adm. Assistant

December 19, 1996

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Timothy Winslow  
Division of Banking  
Building 3, Room 311  
State Capitol Complex  
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Regulations Pertaining to the WV Consumer Credit and Protection Act and the Industrial Loan Company Act

The Legislative Rule-Making Review committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate part of the Legislative Rule
  - (a) as originally filed
  - (b) as modified by the agency   X
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the rule be withdrawn; a statement of reason for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

106-1